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**C&B Family Food Center, Inc. and Local 951, United Food and Commercial Workers International Union, AFL-CIO.** Case 7-CA-35892

August 11, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge filed by the Union on May 2, 1994, the General Counsel of the National Labor Relations Board issued a complaint on June 28, 1994, against C&B Family Food Center, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. On July 14, 1994, the Respondent filed an answer to the complaint, admitting in part and denying in part the allegations of the complaint.

Thereafter, on October 31, 1994, the Regional Director approved an informal settlement agreement, entered into by the Respondent and the Union, in disposition of the complaint. On May 14, 1997, however, the Regional Director issued an order setting aside the settlement agreement and reissuing the complaint on the grounds that the Respondent had failed and refused to comply with the terms of the settlement agreement by failing to make the agreed-upon payments to be forwarded to the Michigan Employment Security Commission.

Although properly served copies of the May 14, 1997 order reissuing the complaint, the Respondent failed to file an answer. Accordingly, on July 14, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On July 18, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the reissued complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 4, 1997, notified the Respondent that unless an answer were received by June 13, 1997, a Motion for Summary Judgment

would be filed. Nevertheless, as indicated above, the Respondent failed to file an answer to the reissued complaint.

Although the Respondent did file an answer to the original June 28, 1994 complaint, that answer was withdrawn by the terms of the settlement agreement, and was not thereafter revived by the Regional Director's order setting aside the settlement agreement. Thus, as the Respondent's answer to the original complaint does not remain extant, it does not preclude summary judgment.<sup>1</sup>

Accordingly, in the absence of good cause being shown for the failure to file a timely answer to the May 14, 1997 reissued complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Michigan corporation with an office and place of business in Edmore, Michigan, has been engaged in the retail sale of groceries from its Edmore and Blanchard, Michigan facilities. During the 1993 calendar year, the Respondent, in conducting its operations, received gross revenue in excess of \$1 million and purchased and received at its Edmore, Michigan facility goods valued in excess of \$50,000 from other enterprises, including from Capistar, Inc., each of which other enterprises had received these goods directly from point outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On February 8 and 10, 1994, the Respondent coercively interrogated employees at its Blanchard and Edmore facilities, respectively, regarding their union activities.

About March 18, 1994, the Respondent transferred employee Cheryl Allen from her produce manager position to a cashier position at the Edmore facility, reducing both her scheduled hours of work and her wage rate. About March 19, 1994, the Respondent discharged its employee Ed Mogg from its Edmore facility. About March 25, 1994, the Respondent issued a written discipline at its Edmore facility to employee Cheryl Allen, and, about April 22, 1994, discharged her. The Respondent engaged in this conduct because the named employees had joined and/or assisted the

<sup>1</sup>See *Signage Systems, Inc.*, 312 NLRB 1115 (1993); *Orange Data, Inc.*, 274 NLRB 1018 (1985), and *Ofalco Properties*, 281 NLRB 84 (1986).

Union and to discourage them and other employees from such activities and other activities protected by the Act.

#### CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By transferring Cheryl Allen, issuing her a written discipline and discharging her, and by discharging Ed Mogg, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unlawfully transferred and discharged Cheryl Allen and discharged Ed Mogg, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their positions as produce manager and meat manager, respectively, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful transfer, written discipline, and discharges, and to notify the discriminatees in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, C&B Family Food Center, Inc., Edmore, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees regarding their union activities.

(b) Transferring, issuing written discipline to, or discharging its employees because they join and/or assist

Local 951, United Food and Commercial Workers International Union, AFL-CIO, or to discourage them and other employees from such activities and other activities protected by the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Cheryl Allen and Ed Mogg full reinstatement their former jobs as produce manager and meat manager, respectively, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful transfer of and written discipline to Cheryl Allen and the unlawful discharges of Cheryl Allen and Ed Mogg, and within 3 days thereafter notify them in writing that this has been done and that the discipline or discharges will not be used against them in any way.

(c) Make whole Cheryl Allen and Ed Mogg for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2, 1994.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 11, 1997

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| Sarah M. Fox, | Member |
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| John E. Higgins, Jr., | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate our employees regarding their union activities.

WE WILL NOT transfer, issue written discipline to, or discharge our employees because they join and/or assist Local 951, United Food and Commercial Workers International Union, AFL-CIO, or to discourage them and other employees from such activities or other activities protected by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Cheryl Allen and Ed Mogg full reinstatement their former jobs as produce manager and meat manager, respectively, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Cheryl Allen and Ed Mogg for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL remove from our files any reference to the unlawful transfer of and written discipline to Cheryl Allen and the unlawful discharges of Cheryl Allen and Ed Mogg, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discipline or discharges will not be used against them in any way.

C&B FAMILY FOOD CENTER, INC.